

CODE OF MASSACHUSETTS REGULATIONS
TITLE 333: PESTICIDE BOARD
CHAPTER 14.00: CIVIL ADMINISTRATIVE PENALTIES

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14.01: Purpose

The purpose of 333 CMR 14.00 is to enforce M.G.L. c. 132B, sections 6C to 6I, inclusive, and the licensing requirements of section 10, pursuant to section 14A.

14.02: Definitions

For purposes of 333 CMR 14.00, the definitions set forth in 333 CMR 2.03 and in this section apply, unless the context or subject matter requires a different interpretation.

Department means the Department of Agriculture Resources.

Enforcement Action means a proceeding initiated by the Department against a Person for one or more Violation(s).

License means any license, permit, certificate, registration, charter, authority, approval, or other form of permission required by the Department pursuant to M.G.L. c. 132B, sections 6C to 6I inclusive, sections 10 and 14A, or any rules and regulations adopted thereunder.

Notice of Violation means a written notice given to a Person by the Department pursuant to 333 CMR 14.05 stating that the Person has failed to comply with one or more Requirement(s).

Offense means an instance of a Violation.

Order means a lawful command issued by the Department under authority of M.G.L. c. 132B, sections 6C to 6I inclusive, sections 10 and 14A, or any rules and regulations adopted thereunder.

Penalty means a civil administrative penalty that the Department proposes to assess pursuant to M.G.L. c. 132B, § 14A and 333 CMR 14.00.

Penalty Assessment Notice means a written notice informing a Respondent that the Department is proposing to assess a Penalty pursuant to 333 CMR 14.09.

Person means an individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or its political subdivision, administrative

agencies, public or quasi-public corporation or body, or other legal entity and any officer, employee, representative, agent, or assign thereof, or a group of persons, including without limitation any school administration.

Record means any document and data that M.G.L. c. 132B, sections 6C to 6I inclusive, sections 10 and 14A, any rules and regulations adopted thereunder, or any Order or License, required to be kept or provided.

Requirement means any obligation or prohibition established by M.G.L. c. 132B, sections 6C to 6I inclusive, sections 10 and 14A, any rules and regulations adopted thereunder, or by any Order or License.

Respondent means a Person addressed in a Notice of Violation or a Penalty Assessment Notice, or any other person subject to an Enforcement Action.

Violation means engaging in any business or other activity without a License, engaging in any activity prohibited by any Requirement, or failing to comply with any Requirement.

14.03: Issuance and Receipt of Notices

Each notice issued by the Department to a Person pursuant to M.G.L. c. 132B, § 14A and 333 CMR 14.00 shall be served in hand or by certified mail, return receipt requested, and each such notice shall be deemed issued by the Department and received by the Person to whom it was delivered as follows:

- (1) If served in hand, on the date when delivered personally; or
- (2) If given by certified mail, return receipt requested, on either:
 - (a) The date signed for;
 - (b) The date returned by the U.S. Postal Service to the Department as unclaimed; or
 - (c) Another date determined by the Department if the Department is persuaded that the notice was not claimed for reasons beyond the control of the Person to whom the notice was sent.

14.04: Preconditions for Assessment of Penalty

- (1) For a Violation capable of being corrected, a Penalty may be assessed if the Violation occurred after November 1, 2000 and is the subject of a Notice of Violation and the Department decides to assess a Penalty as set forth in 333 CMR 14.05.
- (2) For a Violation not capable of being corrected, a Penalty may be assessed if the Violation occurred after November 1, 2000 and the Department decides to assess a Penalty. In determining whether to assess a Penalty for a non-correctible Violation, the Department may consider any factors that it deems relevant, including but not limited to the factors listed in 333 CMR 14.06, regarding the Violation for which the Penalty would be assessed and any other Violation.
- (3) In instances of multiple Violations, 333 CMR 14.04(1) and (2) shall not be mutually exclusive.

14.05: Notice of Violation

- (1) A Notice of Violation shall:
 - (a) Describe one or more Requirement(s) in effect when the Notice of Violation was given, and for each such Requirement, the occasions that the Department asserts the Respondent was not in compliance therewith,
 - (b) Stipulate one or more condition(s) to correct each Violation or come within compliance of each Requirement and specify a reasonable deadline or deadlines, not less than 90 days, by which the Respondent shall either:
 1. Correct each Violation or come into compliance with each Requirement; or
 2. If the Department deems appropriate, submit a written proposal to the Department stating how and when the Respondent proposes to come into compliance by a specific and reasonable deadline.
- (2) The Department may assess a Penalty against any Respondent when the criteria set forth in 333 CMR 14.04(1) are met and after the deadline specified in the Notice of Violation has passed any of the following is true:
 - (a) The Respondent has not:
 1. Corrected each Violation or come into compliance with each Requirement; or
 2. If the Department deems appropriate, submitted a written proposal setting forth how and when the Respondent proposes to come into compliance by a specific and reasonable deadline; or
 - (b) The Respondent continues or repeats the Violation.
- (3) In determining whether to assess a Penalty after a Notice of Violation has been given, the Department may consider any factors that it deems relevant, including but not limited to the factors listed in 333 CMR 14.06, regarding the Violation for which the Penalty would be assessed and other Violation described in a prior Notice of Violation:

14.06 Assessing a Penalty

- (1) If the criteria set forth in 333 CMR 14.04(1) or (2) are met, the Department may consider any factors that it deems relevant in determining whether to assess a Penalty. Without limiting the foregoing, the Department may consider the following factors regarding the Violation for which a Penalty would be assessed:
 - (a) What the Respondent did to prevent the Violation or reoccurrence of the Violation;
 - (b) What the Respondent did, and how quickly the Respondent acted, if possible, to come into compliance after the occurrence of the Violation;
 - (c) What the Respondent did, and how quickly the Respondent acted, to avert, remedy or mitigate whatever harm might have resulted from the Violation; and

- (d) The actual and potential damages suffered, and actual or potential costs incurred, by the Commonwealth, or by any other person, as a result of the occurrence of the Violation.
- (e) The actual and potential impact of the Violation on public health;
- (f) The actual and potential impact of the Violation on the environment;
- (g) Whether the Respondent has committed any prior Violation;
- (h) Whether the Respondent committed the Violation willfully or knowingly;
- (i) The public interest; and
- (j) Any other factors the Department deems relevant, provided that said factors are described in the Penalty Assessment Notice.

14.07: Rules Regarding Amount of Penalty

- (1) No Penalty shall exceed \$1,000 per Offense.
- (2) Each day during which each Violation occurs or continues shall constitute a separate Offense, subject to a separate Penalty. The number of days which shall constitute a separate Offense and shall be subject to a separate Penalty shall be calculated as follows:
 - (a) If Respondent was assessed a Penalty pursuant to 333 CMR 14.04(1), the number of days shall be the sum of each day during which the Violation occurred or continued, commencing with the day that Respondent received the Notice of Violation, and ending on the date of the Penalty Assessment Notice, and each day calculated pursuant to 333 CMR 14.07(3).
 - (b) If the Respondent was assessed a Penalty pursuant to 333 CMR 14.04(2), the number of days shall be the sum of one day, and each day calculated pursuant to 333 CMR 14.07(3).
- (3) After receiving a Penalty Assessment Notice, if the Violation occurs or continues the Department may, subject to the provisions of 333 CMR 14.04, assess a Penalty to the Respondent for each day during which such Violation occurs or continues, as follows:
 - (a) Commencing the day the Penalty Assessment Notice was issued; and
 - (b) Ending on the day the Violation ceases to occur or continue, or, if earlier, the day the adjudicatory proceeding on the Penalty Assessment Notice is concluded.

14.08: Factors Used to Determine Amount of Penalty

In determining the amount of each Penalty for any Violation, the Department may consider any of the following factors:

- (1) Any factors listed under 333 CMR 14.06;

- (2) Whether the Penalty will deter future Violations by making compliance less costly than noncompliance; or
- (3) Any other factors the Department deems relevant, provided that said factors are described in the Penalty Assessment Notice.

14.09: Penalty Assessment Notice

If the Department determines that a Penalty is appropriate, the Department shall issue a Penalty Assessment Notice to the Respondent that shall include:

- (1) A description of the Violation, including, for each Violation:
 - (a) The act or omission that violated one or more Requirement(s) that applied to the Respondent;
 - (b) Each Requirement that such act or omission violated;
 - (c) When the Violation occurred;
 - (d) Whether the Violation is capable of correction by the Respondent; and
 - (e) The manner in which the Respondent should correct each Violation that is capable of correction;
- (2) A statement of the Penalty proposed for each Violation and the date on which such Penalty is due;
- (3) A statement of the Respondent's right to an adjudicatory hearing pursuant to M.G.L. c. 30A regarding the Penalty assessment;
- (4) A statement that the proposed Penalty shall be assessed in addition to any other civil Penalty otherwise provided by law;
- (5) A statement of the actions, if any, that the Respondent may take in order to avoid the Penalty, provided that these actions must be taken within 90 days of the issuance date of the Penalty Assessment Notice;
- (6) A statement of the actions the Respondent may take to avoid waiving the right to a hearing relative to the Penalty under 333 CMR 14.10(2);
- (7) The manner of acceptable payment if an election to waive the hearing is made.

14.10: Right to Adjudicatory Hearing; Waiver; Hearing Rules

- (1) Subject to the waiver provisions of 333 CMR 14.10(2), whenever the Department proposes to assess a Penalty, the Respondent shall have the right to an adjudicatory hearing.
- (2) Whenever the Department seeks to assess a Penalty, the Respondent shall be deemed to have waived the right to an adjudicatory hearing unless, within 21 days of the date of issuance of the Penalty Assessment Notice, the Respondent files with the Department a written statement that denies the occurrence of the acts or omissions alleged in the Penalty Assessment Notice, or asserts that the amount of the proposed Penalty is excessive. In the

event that the Respondent files this timely statement, the Department shall, within 30 days of this statement, notify the Respondent of the date, time and place of the hearing.

- (3) Each adjudicatory hearing under 333 CMR 14.00 shall follow the Standard Rules of Adjudicatory Procedure for informal hearings at 801 CMR 1.02 et. seq.

14.11: Paying a Penalty

Each Penalty shall be paid by certified check, cashier's check, or money order payable to the order of the Commonwealth of Massachusetts. Unless otherwise provided by the Department in writing, each Penalty shall be paid in full no later than 30 days after the following:

- (1) The date of the issuance of the Penalty Assessment Notice, if the Respondent waives the right to an adjudicatory hearing;
- (2) The date of a settlement agreement between the Respondent and the Department, if the Respondent and the Department terminate the hearing process with a settlement agreement that imposes a Penalty;
- (3) The date that the Pesticide Board renders a final decision imposing a Penalty, if the Respondent does not commence an action for judicial review under M.G.L. c. 30A within 30 days of this date; or
- (4) The date that a court upholds the Penalty or such other date as the court may prescribe, if the Respondent commences a civil action for review under M.G.L. c. 30A and the court upholds the Penalty in whole or in part.

14.13: Failure to Pay a Penalty

- (1) The Department may collect any unpaid Penalty by filing a civil collection action in district or superior court, or through any other means available to state agencies.
- (2) The Department may, subject to the provisions of chapter 30A, section 13, deny, suspend or revoke any License for failure to timely pay a Penalty.

REGULATORY AUTHORITY

333 CMR 14.00: M.G.L. c. 132B, § 14A.